

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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October 10, 2002

Chief Rick Lopez
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8620 California Avenue
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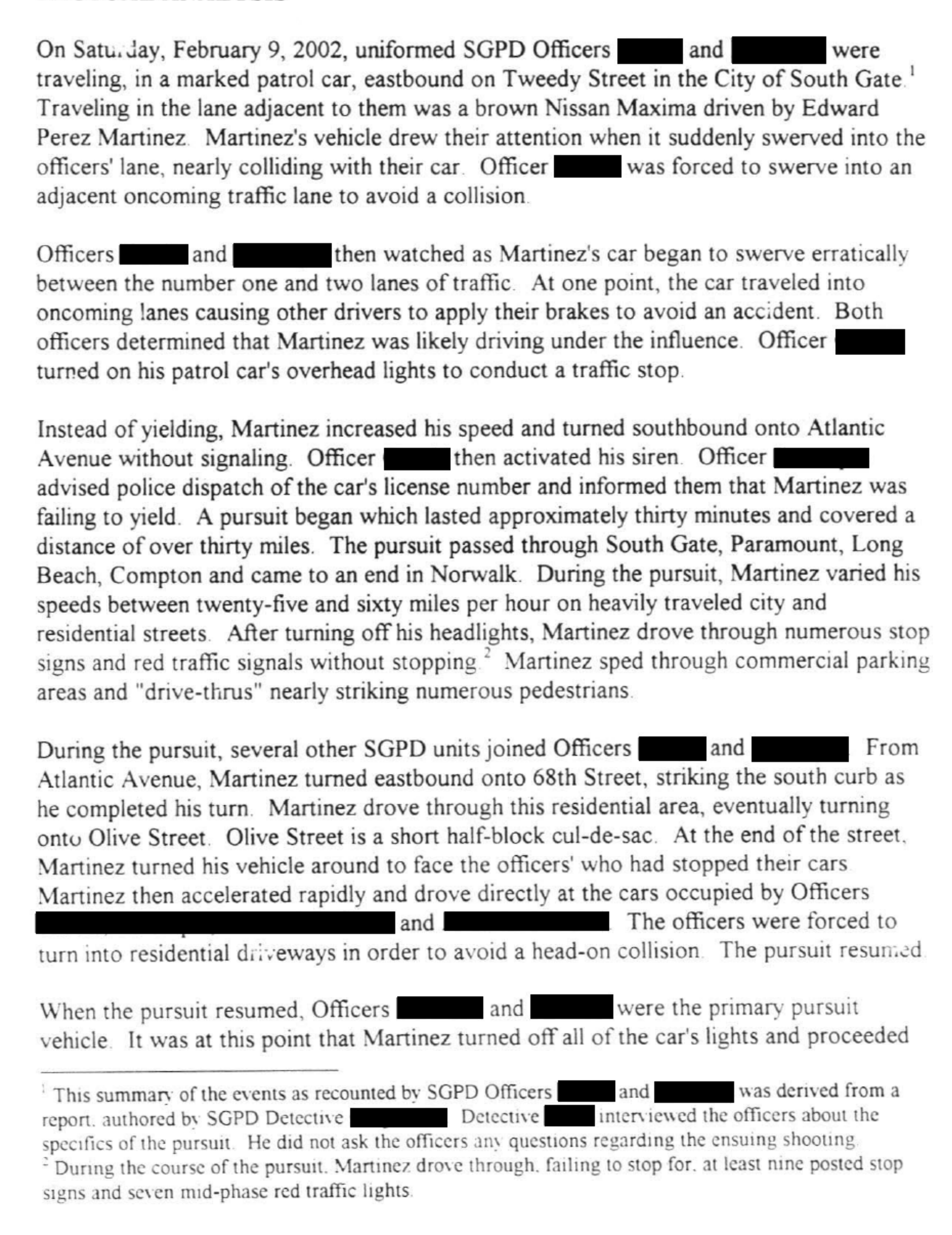
Captain Frank Merriman
Los Angeles County Sheriff's Department
Homicide Bureau
5747 Rickenbacker Road
Los Angeles, California 90040

Re:	J.S.I.D. File #:	02-0129
	L.A.S.D. File #:	002-02730-0452-055
	S.G.P.D. File #:	02-01638

Dear Chief Lopez and Captain Merriman:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 9, 2002, non-fatal shooting of Edward Perez Martinez by Los Angeles County Sheriff's Deputy Christopher Gonzalez and South Gate Police Department (SGPD) Officers [redacted], [redacted], and [redacted]. We have concluded that Deputy Gonzalez and Officers [redacted], [redacted] and [redacted] acted lawfully in self-defense and in defense of others.

The following analysis is based on reports prepared by the Los Angeles County Sheriff's Department (LASD), Homicide Bureau, submitted to this office on July 26, 2002 by Sergeant Robert Taylor and Detective [redacted] The District Attorney's Command Post was notified of this shooting on February 9, 2002 at 8:02 p.m. The District Attorney Response Team comprised of Deputy District Attorney Michael Pettersen and District Attorney Senior Investigator [redacted] responded to the scene of the shooting at 9:15 p.m. D.D.A. Pettersen and D.A.I. [redacted] were given a briefing and a "walk through" of the scene by Lieutenant Marilyn Baker at 10:30 p.m.



FACTUAL ANALYSIS

On Saturday, February 9, 2002, uniformed SGPD Officers [redacted] and [redacted] were traveling, in a marked patrol car, eastbound on Tweedy Street in the City of South Gate.[1] Traveling in the lane adjacent to them was a brown Nissan Maxima driven by Edward Perez Martinez. Martinez's vehicle drew their attention when it suddenly swerved into the officers' lane, nearly colliding with their car. Officer [redacted] was forced to swerve into an adjacent oncoming traffic lane to avoid a collision.

Officers [redacted] and [redacted] then watched as Martinez's car began to swerve erratically between the number one and two lanes of traffic. At one point, the car traveled into oncoming lanes causing other drivers to apply their brakes to avoid an accident. Both officers determined that Martinez was likely driving under the influence. Officer [redacted] turned on his patrol car's overhead lights to conduct a traffic stop.

Instead of yielding, Martinez increased his speed and turned southbound onto Atlantic Avenue without signaling. Officer [redacted] then activated his siren. Officer [redacted] advised police dispatch of the car's license number and informed them that Martinez was failing to yield. A pursuit began which lasted approximately thirty minutes and covered a distance of over thirty miles. The pursuit passed through South Gate, Paramount, Long Beach, Compton and came to an end in Norwalk. During the pursuit, Martinez varied his speeds between twenty-five and sixty miles per hour on heavily traveled city and residential streets. After turning off his headlights, Martinez drove through numerous stop signs and red traffic signals without stopping.[2] Martinez sped through commercial parking areas and "drive-thrus" nearly striking numerous pedestrians.

During the pursuit, several other SGPD units joined Officers [redacted] and [redacted]. From Atlantic Avenue, Martinez turned eastbound onto 68th Street, striking the south curb as he completed his turn. Martinez drove through this residential area, eventually turning onto Olive Street. Olive Street is a short half-block cul-de-sac. At the end of the street, Martinez turned his vehicle around to face the officers' who had stopped their cars. Martinez then accelerated rapidly and drove directly at the cars occupied by Officers [redacted] and [redacted]. The officers were forced to turn into residential driveways in order to avoid a head-on collision. The pursuit resumed.

When the pursuit resumed, Officers [redacted] and [redacted] were the primary pursuit vehicle. It was at this point that Martinez turned off all of the car's lights and proceeded

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[1] This summary of the events as recounted by SGPD Officers [redacted] and [redacted] was derived from a report, authored by SGPD Detective [redacted]. Detective [redacted] interviewed the officers about the specifics of the pursuit. He did not ask the officers any questions regarding the ensuing shooting.

[2] During the course of the pursuit, Martinez drove through, failing to stop for, at least nine posted stop signs and seven mid-phase red traffic lights.

through numerous intersections and commercial parking areas at high speeds with complete disregard for other motorists and pedestrian traffic. Martinez continued to weave between lanes and into oncoming traffic. Near the intersection of Artesia Boulevard and Orange Avenue, the officers saw Martinez reach down towards his front waistband area. Martinez then placed his hand outside of the open sunroof of the car and began throwing "small unknown objects" outside of the car.[3] During a brief stop at the intersection of Rosecrans Boulevard and Orange Avenue, Officers [redacted] and [redacted] observed Martinez turn around in the driver's seat and begin to move objects around on the backseat. It appeared to the officers that Martinez was looking for something.

Eventually, the pursuit made its way to a residential neighborhood north of Norwalk Boulevard in the City of Norwalk. Twice, Martinez drove at high speeds down Cyclops, Crewe and Allard Streets.[4] On each occasion, he returned to Norwalk Boulevard before returning to the neighborhood. On his first return to Norwalk Boulevard, Martinez managed to avoid two "spike strips" deployed at the intersections with Crewe and Allard. After his second trip through the area, Martinez drove over one of the "spike strips" which punctured both of the car's left tires. A short distance later, the car passed over the second spike strip which flattened the car's right rear tire. Martinez turned the vehicle east onto the Norwalk access road. The car came to a stop just north of Allard Street on the access road. The car's "back-up" lights came on briefly and the vehicle moved slightly before coming to a complete stop.

When Martinez's car came to rest, there were five SGPD and three LASD Norwalk patrol vehicles at the scene.[5] An LASD Air Support Operations helicopter had been monitoring the pursuit and was in the air above the scene. Two of the SGPD units parked, side by side, approximately fifteen feet behind Martinez's car. Another two SGPD units parked directly behind the first two. Two of the LASD units parked, one behind the other, a short distance behind the group of SGPD cars. The fifth SGPD vehicle was parked on Norwalk Boulevard and separated from the scene by a grass median. All four of the SGPD units were illuminating Martinez's car with their headlights and spotlights. The LASD air unit was also lighting the scene.

The officers in the first two patrol cars opened both their driver's and passenger's side doors and stood behind them for cover. At the time, Officers [redacted], [redacted], [redacted] and [redacted] took cover behind their respective doors. Deputy Gonzales got out of his car, approached the SGPD officers and took cover behind one of the doors. After his

[3] Officer [redacted] said that these objects were illuminated by his headlights and appeared to be small "ziplock" baggies. The objects were never recovered.

[4] It was later determined that Martinez resided at [redacted] in Norwalk.

[5] It does not appear that LASD units were actively involved in the pursuit. According to LASD records and interviews of LASD personnel, their units were ordered to monitor and observe the pursuit and offer assistance where necessary.

vehicle came to a halt, Martinez appeared to recline his driver's seat. According to the officers at the scene, he then turned his body around and faced them while kneeling on the seat. According to the officers, numerous commands were given to Martinez to display his hands and step from the vehicle. Instead, Martinez appeared to root through items on the backseat and then return his hands to an area behind the driver's seat that was not visible to the officers. As the officers continued telling Martinez to display his hands and exit the car, he raised the middle finger of his left hand and mouthed the words "Fuck you." The officers still could not see Martinez's right hand.

Deputy Gonzalez said that he heard the SGPD officers repeatedly yell for Martinez to put his hands up. Despite the orders, Martinez turned around in the seat and appeared to be resting his body against the seat back. At times, Martinez's face was obscured by the head rest. Deputy Gonzalez stated that Martinez appeared to be holding a dark cylindrical object in his hands. According to Deputy Gonzalez, one of the SGPD officers was yelling, "Put the gun down, put the gun down, don't do it." Deputy Gonzalez said that Martinez made a quick jerking motion with his hands and appeared to point the object he was holding at the officers. Deputy Gonzalez's immediate impression was that the dark colored object Martinez was holding was the barrel of a gun.

According to Deputy Gonzalez, at the same time that Martinez made the quick jerking motion, he (Gonzalez) heard a loud gunshot and observed what he thought was a muzzle flash emanating from inside Martinez's car. The rear windshield of Martinez's car shattered and the SGPD officer who had been standing in front of Deputy Gonzalez fell back into the passenger seat of his patrol unit. All of these events caused Deputy Gonzalez to believe that Martinez was firing upon them. Deputy Gonzalez said that, as gunfire erupted around him, he moved slightly away from the patrol car and fired three rounds at Martinez's vehicle. Deputy Gonzalez stated that, as he was firing, Martinez continued to hold and make quick jerking motions with the object in his hand.

According to Deputy Gonzalez, after the shooting ceased, Martinez remained in the same place in the driver's seat; however, he was slightly "slumped over" with his head against the headrest. He and the other officers continued to yell at Martinez to put his hands in the air. He failed to comply. Deputy Gonzalez said that after a short time, the SGPD officers fired two tear gas rounds into the car. The tear gas seemed to have no effect on Martinez. He said that, after some discussion, a group of SGPD officers approached and removed Martinez from the car.

Deputy Gonzalez indicated that he had prior contact with Martinez in the month before the shooting. He said that he believed that Martinez was an active member of either the

"Varrio Norwalk" or "Peaceful" street gangs. Deputy Gonzalez was also aware that Martinez was on parole and was a parolee at large.[6]

Deputy [redacted] stated that she and her partner, Deputy Josie Woolum, monitored and closely followed, but never joined, the pursuit.[7] She believes that she parked her vehicle sixth in line from Martinez's car when the pursuit came to an end near Allard Street. She stated that she and her partner initially approached the lead SGPD cars, but then backed away, having decided that SGPD should handle the scene. Deputy [redacted] said that the SGPD officers yelled several commands for Martinez to raise his hands. She could see Martinez turned around in the driver's seat making hand gestures at the officers. She stated that Martinez raised and pointed his middle finger at the officers and said "Fuck you." According to Deputy [redacted] as her attention was momentarily diverted, she heard a volley of gunfire. Deputy [redacted] said that she did not see anything in Martinez's hands before the shots were fired. She stated that Martinez continued to ignore the officers commands and he remained in the car until a team of SGPD officers removed him. Neither she nor her partner ever fired their guns.

Investigation revealed that three SGPD officers fired their weapons at Martinez's car. Officers [redacted] and [redacted] each fired five rounds. While it can not be conclusively determined, it appears that Officer [redacted] fired either three or four rounds. These three SGPD officers did not give voluntary statements, concerning the officer involved shooting, to the investigators. Therefore this office has not reviewed anything said by Officers [redacted], [redacted] or [redacted] about the shooting itself. Statements were taken from eight SGPD officers who were at the scene: Sergeant [redacted] Officer [redacted] Officer [redacted], Officer [redacted] Officer [redacted], Officer [redacted], Officer [redacted] and Officer [redacted].

With few exceptions, the accounts of the eight SGPD officers interviewed did not vary in any significant respect from those given by the LASD personnel at the scene. All eight officers indicated that verbal orders to raise his hands were given to Martinez both before and after the shooting. All eight said that Martinez ignored the commands and engaged in conduct consistent with looking for an object in the rear of the car. They also stated that, because of the way that Martinez was concealing himself in the car, they were unable to see his hands. Officer [redacted] said that several officers at the scene were yelling that Martinez had something in his hands.

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[6] This office has received no confirmation that Martinez was a gang member. However, [redacted] Officer [redacted] confirmed that Martinez was [redacted] She also said that Martinez had failed to report for [redacted] She considered him [redacted]

[7] It should be noted that Deputy [redacted] is the sister of SGPD Officer [redacted] Deputy Woolum's description of the incident did not vary from that of her partner.

Following the shooting, Investigators canvassed the surrounding neighborhood for witnesses to the shooting. Many of the neighbors heard the sirens and gunshots but did not see the actual shooting. Others observed the shooting from a distance too far to have seen Martinez's actions inside the vehicle. Those statements will not be discussed in detail as they shed no useful light on the events of the shooting.

The investigators interviewed [redacted]. [redacted] said that she was having a party at her home, which sits on the northwest corner of Allard Street and the Norwalk Boulevard access road, at the time of the shooting. She indicated that she was standing on the sidewalk in front of her home and estimated that Martinez's vehicle was approximately "100 yards" from her vantage point. [redacted] stated that no commands were given to Martinez before the officers opened fire on him. She added that, after the shooting, she walked to the Martinez home and "hugged" Martinez's mother and told her that she was sorry. The investigators also spoke to [redacted], [redacted], [redacted], [redacted], all of whom were in attendance at the same party. They all indicated that they saw the shooting. All of them stated that the officers made no commands prior to shooting. With the exception of the discrepancy regarding the commands, the remainder of their accounts were generally consistent with the officers.[8]

Also interviewed was [redacted]. [redacted] indicated that she observed the shooting from a bedroom window of her home.[9] She said that she watched as the pursuit ended a short distance from her house. [redacted] stated that, prior to the shooting, the officers stated, "Whoever is in the vehicle, get out with your hands up." She added that, after the shots, things became quiet and the officers repeated the command. [redacted] was present in the same home. She also said that she heard the officers "say something" before the shooting, but she was unable to determine what was said.

After the shooting, three SGPD officers removed Martinez from the vehicle. The officers were required to break both driver's side windows to pull him from the car. Martinez was not conscious at the time. When the officers approached, they noticed that Martinez's right hand was between his legs. Once he was removed from the car, they noticed that his pants were open at the waist. Paramedics were already on scene and began to administer emergency medical treatment. Martinez had received a gunshot wound to the head and a second gunshot wound to the left torso. Martinez's car was thoroughly searched at the end of the investigation. A jacket and a wallet were found in the rear seat. No weapons were found in the car.

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[8] It should be noted that the LASD personnel at the scene indicated that the attendants at the party were yelling at the officers and refused to enter the home after the shooting. It appears that they have a close relationship with Martinez's family and were in contact with them after the shooting and before their respective interviews.

[9] [redacted]'s home is directly across the street from the [redacted] residence.

Martinez was transported to Saint Francis Medical Center in the City of Lynwood where he underwent emergency surgery for his wounds. Although the initial prognosis was that he was not likely to survive, Martinez recovered from the injuries and was released into LASD custody on March 19, 2002. Testing performed on a sample of Martinez's blood drawn immediately after his admission to the hospital revealed the presence of both amphetamine and methamphetamine. A "K.A.T. scan" x-ray taken after the surgery revealed the presence of an object that appeared to be a vial in Martinez's rectal cavity. Suppositories were administered in the hope that Martinez would pass the object. On February 17, 2002, Martinez did pass the object which was a small brown vial containing a clear liquid. Testing revealed that the liquid in the vial was phencyclidine.



Martinez has a [redacted] and [redacted]. At the time of the shooting, he was [redacted]. On February 28, 2002, Deputy District Attorney William Smith of District Attorney's South Gate Branch Office filed a five count felony complaint against Martinez. The complaint alleged four violations of Penal Code § 245(c), assault on a peace officer, and a single violation of Vehicle Code § 2800.2(a), evading a police officer with willful disregard. On July 11, 2002, Martinez plead guilty to a single count violation of Penal Code § 245(c). That case is set for sentencing on October 11, 2002.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of another if it reasonably appears that the person claiming the right of self-defense or the defense of another actually and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams, (1977) 75 Cal.App.3d 731.

If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation seeing and knowing the same facts, would be justified in believing himself in like danger, and if the person so confronted acts in fear and honest conviction, his right of self-defense is the same whether such danger is real or apparent. People v. Jackson, (1965) 233 Cal.App.2d 639.

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALJIC 5.30, 5.32.

CONCLUSION

Martinez lead the South Gate Police Department on an extremely dangerous thirty mile chase over and through heavily traveled city and residential streets. On several occasions, he came close to injuring other drivers and pedestrians. On at least two occasions, he attempted to crash his vehicle into multiple police units. As a result, he has plead guilty to assault on a police officer. Martinez clearly evidenced a complete disregard for both the lives of others and his own.

During the pursuit, Martinez was seen tossing items from the sunroof of the car. On at least one occasion, Martinez was observed engaging in actions which could lead the reasonable observer to believe that he was attempting to retrieve something form the back seat of the car. At the termination of the pursuit, instead of complying with their orders to show his hands, Martinez turned to face the officers and actively concealed himself behind his drivers seat. He then began "rooting" through items on the back seat while continuing to refuse to display his hands. It was entirely reasonable for the officers to conclude that Martinez's actions were an attempt to arm himself. In fact, at one point, Deputy Gonzalez believes he observed a dark colored cylindrical object, consistent with the barrel of a handgun in Martinez's hand. In short, the combination of Martinez's non-compliance with lawful orders, his refusal to show his hands and his attempts to retrieve objects from rear seat, were more than sufficient to lead a reasonable officer to believe that he was arming himself and posed a serious danger to the lives of the officers.

Having concluded that Deputy Gonzalez and Officers [redacted], [redacted] and [redacted] acted lawfully in self-defense and in defense of others, we are closing our file and will take no further action on this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By

MICHAEL KENNETH PETTERSEN
Deputy District Attorney
[redacted]

c: Deputy Christopher Gonzalez, #[redacted]
Officer [redacted]
Officer [redacted]
Officer [redacted]